IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 535 of 1991
With
CIVIL APPLICATION NO. 3412 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAGINDAS DAMODARDAS LOKHANI

Versus

RAMANLAL JAINDAS VORA

Appearance:

1. First Appeal No. 535 of 1991

MR DEEPAK M SHAH for Petitioner No. 1-2

MR HJ NANAVATI for Respondent No. 1

MR JN VASAVADA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 29/04/2004

ORAL JUDGEMENT

1. The appellants who had been appointed as executors of the Will of one Smt. Jayaben Vanravandas filed an application for probate of the said Will. By the said Will Jayaben who was the owner of one house bequeathed the same to two persons, namely Nitin Balmukund and Hitesh Balmukund who were the sons of her sister. The respondents who were relatives of Vrandavandas, the husband of Jayaben, filed objections to the grant of the probate. The learned trial Judge after recording the evidence found that the Will was not proved and dismissed the application for probate. The appellants who are the executors of the Will have therefore field this appeal.

2. It appears that during the pendency of the appeal the beneficiaries, namely, Nitin Balmukund and Hitesh Balmukund sold the house to one Janakkumar Pranjivan Somaiya by a registered sale deed dated 2-7-1978. The respondents in the appeal, therefore, filed Civil Application No. 3412 of 2003 alleging that the appellants had committed breach of the order of status quo and prayed that the interim relief granted by this Court in Civil Application No. 1846 of 1991 on 29-4-2001 be vacated. However now the learned counsel for the parties have filed a purshish signed by themselves and by Arunkumar Laxmidas Vora, respondent No.2, for himself and as power of attorney holder of respondent No.1. It is stated that the respondents are withdrawing their objections since the beneficiaries under the Will, the purchaser Janakkumar Pranjivan Somaiya and the respondents objectors have settled the matter as a whole out of court by separate agreement.

Since the dispute with respect to the house which was the subject mater of the Will in question has been settled between the beneficiaries under the Will on the one hand and the objectors on the other, nothing survives so far as the probate proceedings are concerned. The appeal therefore becomes infructuous and is disposed of accordingly.

4. In view of the order passed in main appeal, Civil Application No. 3412 of 2003 does not survive and is dismissed.

No order as to costs.

Dt: 29-4-2004 (M.C. Patel, J)

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